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09/929,238	08/13/2001	Stephen F. Gass	SDT 315	8811
27630	7590	05/16/2006	EXAMINER	
SD3, LLC 25977 S.W. Canyon Creek Road, Suite G WILSONVILLE, OR 97070			ALIE, GHASSEM	
			ART UNIT	PAPER NUMBER
			3724	

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/929,238  
Filing Date: August 13, 2001  
Appellant(s): GASS ET AL.

**MAILED**  
**MAY 16 2006**  
**GROUP 3700**

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David A. Fanning

For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 02/17/06 appealing from the Office action mailed 09/20/05.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

- a. Appeal of application serial number 09/929,221 (appeal brief filed, awaiting examiner's answer).
- b. Appeal of application serial number 09/929,227 (notice of appeal filed).
- c. Appeal of application serial number 09/929,240 (notice of appeal 5 filed).
- d. Appeal of application serial number 09/929,242 (notice of appeal 5 filed).
- e. Appeal of application serial number 09/929,425 (appeal brief filed, awaiting examiner's answer).
- f. Appeal of application serial number 09/929,426 (examiner reopened prosecution after appellant filed an appeal brief).
- g. Appeal of application serial number 10/053,390 (appeal brief filed, awaiting examiner's answer).
- h. Appeal of application serial number 10/100,211 (notice of appeal filed, awaiting examiner's answer).
- i. Appeal of application serial number 10/189,027 (appeal brief filed, awaiting examiner's answer).

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j. Appeal of application serial number 10/189,031 (notice of appeal filed, awaiting examiner answer).

k. Appeal of application serial number 10/243,042 (examiner reopened prosecution after appellant filed an appeal brief).

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,934,233	BRUNDAGE et al.	06-1990
5,791,224	SUZUKI et al.	08-1998
3,785,230	LOKEY	01-1974
4,117,752	YONEDA	10-1978

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9 and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Brundage et al., U.S. Patent 4,934,233, or Suzuki et al., U.S. Patent 5,791,224, in view of Lokey, U.S. Patent 3,785,230, and Yoneda, U.S. Patent 4,117,752.

Brundage et al. and Suzuki et al. both disclose the invention substantially as claimed except for the detection system adapted to detect contact between the blade and a person, and a brake mechanism adapted to stop rotation of the blade upon detection by the detection system of contact between the blade and the person. However, Lokey discloses that it is old and well known in the circular saw art to use detection systems and brake mechanism with circular cutting tools for the purpose of detecting unsafe conditions and then braking the cutting tool such that injury to the user is prevented. Yoneda discloses that it is old and well known in the art to use detection that detect contact between a user and a blade for the purpose of preventing injury to a user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a detection system and braking mechanism, as taught by Lokey and Yoneda, with the miter saws of Brundage et al. and Suzuki et al., in order to prevent injury to a user.

#### **(10) Response to Argument**

Appellant's content that the combination of Brundage et al. or Suzuki et al. with Lokey and Yoneda are improper as the specific structures of Lokey and Yoneda would not work on a miter and/or would be unsafe. However, the examiner respectfully disagrees. The test for obviousness is not whether the features of a secondary

reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, it is not a question of the specific structural elements of Lokey and Yoneda are incorporated into the structure of Brundage or Suzuki but rather what the combination of references discloses, i.e., a miter saw with a braking mechanism for stopping a blade upon detection of contact between the user and the blade. As to the specifics of the structural elements of Lokey and Yoneda are irrelevant given the current claims have no specifics to structural details for providing the braking/detecting functions. What structure in the claims allow for braking on a miter saw that is not in the prior art?

Appellant's argument that there is no suggestion to combine Brundage et al. or Suzuki et al. with Lokey and Yoneda is not persuasive. Brundage et al. or Suzuki teaches a circular saw machine that includes a handle and a swing arm to pivot the blade into the cutting zone. Lokey teaches a circular saw machine including a safety mechanism that includes a detection system capable of detecting a contact between a person and a blade and a brake mechanism adapted to stop rotation of the blade. Lokey does not explicitly teach that the detection system detects contact between a person and the blade. However, the safety mechanism in Lokey is adjustable and it can be tuned in a manner that detects contact between a person and a user, as taught by Yoneda. The safety mechanism in Lokey still can prevent severe injuries to the user when there is a contact between a user

and a person. Therefore, it would have been obvious to a person of ordinary skill in the art to provide the circular saw machine in Brundage et al. or Suzuki et al. with the safety mechanism for a circular saw machine in Lokey and the detection mechanism in Yoneda in order prevent injuries to a user.

Appellant's content that the proximity detection in Lokey would completely avoid injuries and a person of ordinary skill in the art would not likely try to modify the proximity detection system to a contact detection system. Firstly, Lokey does not teach that the safety mechanism completely avoids injuries to a user. In fact, the instant application also does not disclose that the safety mechanism completely prevents injuries to a user. Secondly, Lokey teaches "[a]djustability of the equipment permits the equipment to be tuned to the capacitance effect of each individual user." Therefore, the capacitance sensor in Lokey can be tuned in a manner that the brake mechanism stops the rotation of the blade when there is contact between a person and the circular blade. In other words, the equipment can be adjusted in a manner that the detection system detects contact between a person and the circular saw. It should be noted that some users of circular saw machines prefer the blade to be stopped when there is a contact between a person and a circular blade, because the user inclined to guide or push the workpiece to area very close to periphery of the circular saw. In fact, Yoneda teaches that the brake mechanism is actuated when there is a contact between a user and the saw blade. The use of contact detection system and proximity detection system are two art-recognized alternatives for the safety systems in cutting apparatus. Therefore, it is within the skill of a person of ordinary skill in the art to replace one detection system with the other

detection system according to the degree of flexibility needed for the user to work around and within the cutting zone of the blade in a cutting apparatus.

Appellant's argument that the braking mechanism in Lokey is not fast enough to prevent the user from injuries when there is contact between the user and the circular blade is not persuasive. Firstly, claims of the instant application do not recite how fast the brake mechanism should be activated or how fast the circular blade should be stopped when contact between a user and the circular saw is detected. In fact, claims of the instant application do not recite that the safety system prevents the user from injuries when the user contacts the circular saw. Claims broadly recite "a detection system adapted to detect contact between the blade and a person,; and a brake mechanism adapted to stop rotation of the blade upon detection of contact between the blade and the person." The safety mechanism in Lokey may not completely prevent injuries to a user when there is a contact between the user and the circular blade. However, the brake mechanism in Lokey minimizes possible severe injuries to the user when there is a contact between the user and the circular saw. It should be noted that the degree of the injuries to the user when the user contact the blade has not been claimed in the instant application.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

#### **(12) Conclusion**

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Ghassem Alie/GA

April 27, 2006

Conferees:

Allan Shoap, SPE 3700

Boyer Ashley, SPE 3700

  
**BOYER D. ASHLEY**  
**SUPERVISORY PATENT EXAMINER**